

April 26, 1996

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
700 Central Building
810 Third Avenue
Seattle, Washington 98104

REPORT AND RECOMMENDATION TO THE KING COUNTY COUNCIL

SUBJECT: Department of Natural Resources, Natural Resources
Division File No. **E95CT039**
Proposed Ordinance No. **96-246**

Open Space Taxation (Public Benefit Rating System)
Application of **PENELOPE CHISHOLM**

Location: 36224 Southeast 46th Street, Fall City,
Washington

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve, subject to conditions
Department's Final:	Approve, subject to conditions
Examiner:	Approve, subject to conditions

PRELIMINARY REPORT:

The Natural Resources Division Preliminary Report on Item
No. E95CT039 was received by the Examiner on March 25, 1996.

PUBLIC HEARING:

After reviewing the Natural Resources Division's Report and
examining available information on file with the
application, the Examiner conducted a public hearing on the
subject as follows:

The hearing on Item No. E95CT039 was opened by the Examiner at
10:46 a.m., April 8, 1996, in Room 2, Department of Development
and Environmental Services, Eastpointe Plaza Building, 3600 -
136th Place Southeast, Bellevue, Washington, and adjourned at
10:52 a.m. Participants at the public hearing and the exhibits
offered and entered are listed in the attached minutes. A
verbatim recording of the hearing is available in the office of
the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the
record in this matter, the Examiner now makes and enters the
following:

FINDINGS:

- General Information:
Owner: Penelope Chisholm
Location: 36224 Southeast 46th Street
Fall City, WA 98024
Priority Resources Requested:
Aquifer protection area
Significant plant, wildlife, and salmonid habitat area
Conservation/historic easement
Zoning: RA2.5
Acreage:
Property Total: 8.50 acres
Subject to Application: 7.00 acres
Recommended: 7.00 acres
STR: NE-SW-13-24-07

2. The Division does not recommend granting conservation easement point approval. No conservation easement presently exists upon the property. However, the Division acknowledges that if the Applicant properly effects a conservation easement, it would mean an 80% reduction from market value, rather than the recommended 70% reduction.

Note, also, that due to the lack of a conservation easement in the hearing record, the Division recommends a current use value of 30% of market value, not 20% of market value as indicated on page 5 of the Division's Preliminary Report (Exhibit No. 4).

3. In addition to the resource points requested by the Applicant, the Natural Resources Division also recommends that the Applicant receive credit for "surface water quality buffer" and for "bonus surface water quality buffer".
4. The Division's recommended open space acreage is revised downward from 7.5 acres as indicated in its preliminary report dated April 8, 1996,, (Exhibit No. 4), to only 7.0 acres. This revised recommendation is based upon accurate actual site dimensions provided by the Applicant prior to the hearing.
5. Except as modified herein, the facts set forth in the Natural Resources Division's Preliminary Report to the King County Hearing Examiner for the April 8, 1996, public hearing are found to be correct and are incorporated herein by reference. Copies of the Division Report will be attached hereto for submittal to the King County Council.

CONCLUSIONS:

1. Approval of current use valuation for 7.0 acres of the subject property, pursuant to the Public Benefit Rating System adopted by King County Ordinance No. 10511, would be consistent with the purposes and intent of King County to maintain, preserve, conserve and otherwise continue in existence adequate open space lands and to assure the use and enjoyment of natural resources and scenic beauty for the economic and social well-being of King County and its citizens.
2. Timely application has been made to King County for the current use valuation of the subject property to begin in 1997. Notice of said application was given in the manner required by law.
3. The subject property contains priority open space resources and is entitled to bonus points pursuant to the King County Public Benefit Rating System, which justify a total award of 30 points. The resulting current use value is 30% of market value for 7.0 acres of the subject property.

RECOMMENDATION:

APPROVE the request of PENELOPE CHISHOLM for current use valuation of 30% of market value for 7.0 acres of the subject property, subject to the following conditions:

1. The applicant shall provide to the King County Assessor a legal description, or adequate information to enable the Assessor to develop a legal description, of the improved

portion of the property which shall remain assessed at 100% of market value, and the portion of the subject property (7.0 acres) which shall be assessed at its current use valuation.

2. Current use valuation shall be subject to all terms and conditions of RCW 84.34 and King County Code Chapter 20.36, as the same may be amended from time to time, and all regulations and rules duly adopted to implement State law and County ordinances pertaining to current use valuation.
3. Within thirty (30) days of the date of approval of this application by the King County Council, the applicant shall sign an agreement which accepts the conditions of approval set forth herein and meets the requirements of WAC 458-30-240. The following conditions shall be specifically set forth in the agreement:
 - (1) Failure of the owner to comply with these conditions shall be basis for removal, by King County, of the current use designation, in which case the land shall be subject to the penalty, tax, and interest provisions of RCW 84.34 and assessed at true and fair value. The County Assessor and the Natural Resources Division may reevaluate the property to determine whether removal of the open space designation is appropriate. Removal shall follow the process in RCW 84.34.108.
 - (2) Revisions to this agreement may only occur upon mutual written approval of the owner and granting authority.
 - (3) The open space classification for this land will continue as long as it is primarily devoted to and used for the purpose of protecting open space. Classification will be removed if dedication to this purpose ceases to exist. A change in circumstances which diminishes the extent of public benefit from that generally outlined in the Natural Resources Division Preliminary Report to the King County Hearing Examiner will be cause for removal of the current use assessment classification. It is the owner's responsibility to notify the Assessor of a change in circumstance.
 - (4) When a portion of the open space land is withdrawn or removed from the program, the Natural Resources Division and the Assessor shall reevaluate the remaining land to determine its continued qualification under the program. If the remaining portion meets the criteria for priority resources, it may continue under current use taxation.
 - (5) Except as otherwise stated in this agreement, there shall be no alteration of the open space land or resources. **Any alteration may constitute a change of use and subject the property to the additional tax, interest, and penalty provisions of RCW 84.34.080.** "Alteration" means any human-induced action that adversely impacts the existing condition of the open space land or resources including but not limited to the following:
 - a. erecting structures;
 - b. grading;
 - c. filling;
 - d. dredging;
 - e. channelizing;
 - f. modifying land or hydrology for surface water management purposes;

- g. cutting, pruning, limbing or topping, clearing, planting, introducing, relocating or removing vegetation, however, selective cutting may be permitted for firewood;
 - h. applying herbicides or pesticides or any hazardous or toxic substance;
 - i. discharging pollutants except stormwater;
 - j. paving, construction, application of gravel;
 - k. storing of equipment, household supplies, play equipment, or compost;
 - l. engaging in any other activity that adversely impacts the existing vegetation, hydrology, wildlife, wildlife habitat, or other open space resource.
- (6) Subject to the conditions and restrictions set forth in Section 5, the following uses, activities and alterations are permitted, following receipt of written approval as set forth below:
- a. In areas which have become infested by noxious weeds, the owner shall submit a control and enhancement plan to the King County Natural Resources Division and local jurisdiction for approval prior to removing the weeds.
 - b. In areas invaded by non-native invasive species, replacement with native species or other appropriate vegetation may be allowed subject to approval of an enhancement plan by the King County Natural Resources Division.
 - c. Trees posing a hazard to structures or major roads may be removed. Any trees removed must be replaced.
- (7) There shall be no motorized vehicle driving or parking allowed on the open space land with the exception of along driveways.
- (8) Grazing of livestock shall be prohibited on the open space land.
- (9) Revisions to these conditions may only occur upon mutual written approval of the owner and Granting Authority. These conditions shall apply so long as the property retains its open space designation or until a conservation easement is granted to King County or an approved grantee by the applicant or his successors or assigns.

Upon recording of an approved conservation easement, conditions contained in this recommendation shall be automatically superseded and replaced by conditions contained within the approved easement.

RECOMMENDED this 26th day of April, 1996.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 26th day of April, 1996, to the following parties and interested persons:

Penelope Chisholm
36224 Southeast 46th Street
Fall City, Washington 98024

George Kritsonis, Tax Assessor's Office
Ted Sullivan, Natural Resources Division
Charlie Sundberg, Cultural Resources Division
Connie Walton, Natural Resources Division
Stephanie Warden, Metro King County Council Administration

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) on or before May 10, 1996. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council on or before May 17, 1996. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless within twenty (20) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE APRIL 8, 1996 PUBLIC HEARING ON NATURAL RESOURCES DIVISION FILE NO. E95CT039 - CHISHOLM:

R.S. Titus was the Hearing Examiner in this matter.
Participating in the hearing were Ted Sullivan and Penelope Chisholm.

The following exhibits were offered and entered into the record:

Entered April 8, 1996:

Exhibit No. 1	Not offered
Exhibit No. 2	Not offered
Exhibit No. 3	Not offered
Exhibit No. 4	Department of Natural Resources, Natural Resources Division Preliminary Report to the King County Hearing Examiner for the April 8, 1996 public hearing
Exhibit No. 5	Introductory Ordinance to Council
Exhibit No. 7	Legal Notice to Council
Exhibit No. 8	Notification to Applicant of Hearing
Exhibit No. 9	Application, Signed/Notarized
Exhibit No. 10	Legal Description
Exhibit No. 11	Assessor maps
Exhibit No. 12	King County Situs Report
Exhibit No. 13	Site map
Exhibit No. 14	Arcview map
Exhibit No. 15	TRW Property Profile
Exhibit No. 16	Not offered
Exhibit No. 17	Not offered
Exhibit No. 18	Easement Agreement
Exhibit No. 19	Photos and description of property
Exhibit No. 20	Examiner's Notice of Hearing
Exhibit No. 21	Additional photo of property

Entered April 17, 1996, pursuant to administrative continuance:

Exhibit No. 6	Affidavit of Publication
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